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HOUSE BILL 767

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

TERRY T. MARQUARDT

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE AGE DESIGNATIONS AND  
PREDICATE OFFENSES FOR SERIOUS YOUTHFUL OFFENDERS AND YOUTHFUL  
OFFENDERS; REVISING DISPOSITIONS PURSUANT TO THE DELINQUENCY  
ACT; PROVIDING THAT A SERIOUS YOUTHFUL OFFENDER OR YOUTHFUL  
OFFENDER MAY NOT FILE A MOTION TO SEAL HIS RECORDS; PROVIDING  
FOR PARENTAL FINANCIAL LIABILITY AND RESPONSIBILITY; AMENDING  
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 1, as amended) is amended to read:

"31-18-15.2. DEFINITIONS.--As used in the Criminal  
Sentencing Act:

A. "serious youthful offender" means an individual:

(1) [~~fifteen~~] fourteen to eighteen years of age

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1 at the time of the offense who is charged with, [~~and~~] indicted  
2 or bound over for trial for [~~first degree murder; and~~] one of  
3 the following offenses:

4 (a) first degree murder, as provided in  
5 Section 30-2-1 NMSA 1978;

6 (b) second degree murder; as provided in  
7 Section 30-2-1 NMSA 1978;

8 (c) voluntary manslaughter, as provided  
9 in Section 30-2-3 NMSA 1978;

10 (d) aggravated assault with a deadly  
11 weapon, as provided in Subsection A of Section 30-3-2 NMSA 1978;

12 (e) aggravated battery inflicting great  
13 bodily harm or with a deadly weapon, as provided in Subsection C  
14 of Section 30-3-5 NMSA 1978;

15 (f) kidnapping, as provided in Section  
16 30-4-1 NMSA 1978; or

17 (g) robbery while armed with a deadly  
18 weapon, as provided in Section 30-16-2 NMSA 1978; or

19 (2) fourteen to eighteen years of age who is  
20 charged with committing at least one of the offenses set forth  
21 in Subsection A of Section 32A-2-3 NMSA 1978 and who has  
22 previously been committed to the custody of the corrections  
23 department as a serious youthful offender or youthful offender;  
24 and

25 B. "youthful offender" means a delinquent child

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1 subject to adult or juvenile sanctions who is:

2 (1) [~~fourteen to~~] less than eighteen years of  
3 age at the time of the offense and who is adjudicated for at  
4 least one of the following offenses:

5 [~~(a) second degree murder, as provided in~~  
6 ~~Section 30-2-1 NMSA 1978;~~

7 ~~(b)]~~ (a) assault with intent to commit a  
8 violent felony, as provided in Section 30-3-3 NMSA 1978;

9 [~~(c) kidnapping, as provided in Section~~  
10 ~~30-4-1 NMSA 1978;~~

11 ~~(d) aggravated battery, as provided in~~  
12 ~~Subsection C of Section 30-3-5 NMSA 1978;~~

13 ~~(e)]~~ (b) aggravated battery upon a peace  
14 officer, as provided in [~~Subsection C of~~] Section 30-22-25 NMSA  
15 1978;

16 [~~(f)]~~ (c) shooting at a dwelling or  
17 occupied building or shooting at or from a motor vehicle, as  
18 provided in Section 30-3-8 NMSA 1978;

19 [~~(g)]~~ (d) dangerous use of explosives, as  
20 provided in Section 30-7-5 NMSA 1978;

21 [~~(h)]~~ (e) criminal sexual penetration, as  
22 provided in Section 30-9-11 NMSA 1978;

23 [~~(i) robbery, as provided in Section~~  
24 ~~30-16-2 NMSA 1978;~~

25 ~~(j)]~~ (f) aggravated burglary, as provided

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1 in Section 30-16-4 NMSA 1978;

2 [~~(k)~~] (g) aggravated arson, as provided  
3 in Section 30-17-6 NMSA 1978; or

4 [~~(l)~~] (h) abuse of a child that results  
5 in great bodily harm or death to the child, as provided in  
6 Section 30-6-1 NMSA 1978;

7 (2) less than fourteen years of age at the time  
8 of the offense and who is adjudicated for at least one of the  
9 following offenses:

10 (a) second degree murder, as provided in  
11 Section 30-2-1 NMSA 1978;

12 (b) voluntary manslaughter, as provided  
13 in Section 30-2-3 NMSA 1978;

14 (c) aggravated assault with a deadly  
15 weapon, as provided in Subsection A of Section 30-3-2 NMSA 1978;

16 (d) aggravated battery inflicting great  
17 bodily harm or with a deadly weapon, as provided in Subsection C  
18 of Section 30-3-5 NMSA 1978;

19 (e) kidnapping, as provided in Section  
20 30-4-1 NMSA 1978; or

21 (f) robbery while armed with a deadly  
22 weapon, as provided in Section 30-16-2 NMSA 1978;

23 [~~(2) — fourteen to~~] (3) less than eighteen years  
24 of age at the time of the offense and adjudicated for any felony  
25 offense and who has had three prior, separate felony

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1 adjudications within a three-year time period immediately  
2 preceding the instant offense. The felony adjudications relied  
3 upon as prior adjudications shall not have arisen out of the  
4 same transaction or occurrence or series of events related in  
5 time and location. Successful completion of consent decrees is  
6 not considered a prior adjudication for the purposes of this  
7 paragraph; or

8 [~~3~~—fourteen] (4) less than thirteen years of  
9 age and adjudicated for first degree murder, as provided in  
10 Section 30-2-1 NMSA 1978. "

11 Section 2. Section 31-18-15.3 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 3) is amended to read:

13 "31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION. --

14 A. An alleged serious youthful offender may be  
15 detained in any of the following places, prior to arraignment in  
16 metropolitan, magistrate or district court:

17 (1) a detention facility for delinquent  
18 children licensed by the children, youth and families  
19 department;

20 (2) any other suitable place, other than a  
21 facility for the care and rehabilitation of delinquent children,  
22 that meets standards for detention facilities as set forth in  
23 the Children's Code and federal law; or

24 (3) a county jail, if a facility described in  
25 Paragraph (1) or (2) of this subsection is not appropriate.

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1           B. When an alleged serious youthful offender is  
2 detained in a juvenile detention facility prior to trial, the  
3 time spent in the juvenile detention facility shall count  
4 towards completion of any sentence imposed.

5           C. At arraignment, when a metropolitan or district  
6 court judge or a magistrate determines that an alleged serious  
7 youthful offender should remain in custody, the alleged serious  
8 youthful offender may be detained in an adult or juvenile  
9 detention facility, subject to the facility's accreditation and  
10 the provisions of applicable federal law.

11           D. When an alleged serious youthful offender is  
12 found guilty of [~~first degree murder~~] an offense set forth in  
13 Subsection A of Section 31-18-15.2 NMSA 1978 the court shall  
14 sentence the offender pursuant to the provisions of the Criminal  
15 Sentencing Act. The court may sentence the offender to less  
16 than, but not exceeding, the mandatory term for an adult. The  
17 determination of guilt becomes a conviction for purposes of the  
18 Criminal Sentencing Act.

19           E. Prior to the sentencing of an alleged serious  
20 youthful offender who is convicted of [~~first degree murder~~] an  
21 offense set forth in Subsection A of Section 31-18-15.2 NMSA  
22 1978, adult probation services shall prepare a presentence  
23 report and submit the report to the court and the parties five  
24 days prior to the sentencing hearing.

25           F. When the alleged serious youthful offender is

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1 convicted of a lesser offense than [~~first degree murder~~] an  
2 offense set forth in Paragraph (1) of Subsection A of Section  
3 31-18-15.2 NMSA 1978 and is not a serious youthful offender as  
4 provided in Paragraph (2) of Subsection A of Section 31-18-15.2  
5 NMSA 1978, the court shall provide for disposition of the  
6 offender pursuant to the provisions of Section [~~32-2-19 or 32-2-~~  
7 ~~20~~] 32A-2-19 or 32A-2-20 NMSA 1978. When an offender is  
8 adjudicated as a delinquent child, the conviction shall not be  
9 used as a conviction for purposes of the Criminal Sentencing  
10 Act. "

11 Section 3. Section 32A-1-4 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 13, as amended) is amended to read:

13 "32A-1-4. DEFINITIONS. --As used in the Children's Code:

14 A. "adult" means an individual who is eighteen years  
15 of age or older;

16 B. "child" means an individual who is less than  
17 eighteen years old;

18 C. "court", when used without further qualification,  
19 means the children's court division of the district court and  
20 includes the judge, special master or commissioner appointed  
21 pursuant to the provisions of the Children's Code or supreme  
22 court rule;

23 D. "court appointed special advocate" or "CASA"  
24 means a person appointed as a CASA, pursuant to the provisions  
25 of the Children's Court Rules and Forms, who assists the court

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1 in determining the best interests of the child by investigating  
2 the case and submitting a report to the court;

3 E. "custodian" means a person, other than a parent  
4 or guardian, who exercises physical control, care or custody of  
5 the child, including any employee of a residential facility or  
6 any persons providing out-of-home care;

7 F. "department" means the children, youth and  
8 families department, unless otherwise specified;

9 G. "foster parent" means a person, including a  
10 relative of the child, licensed or certified by the department  
11 or a child placement agency to provide care for children in the  
12 custody of the department or agency;

13 H. "guardian" means the person having the duty and  
14 authority of guardianship;

15 I. "guardianship" means the duty and authority to  
16 make important decisions in matters having a permanent effect on  
17 the life and development of a child and to be concerned about  
18 the child's general welfare and includes ~~but is not necessarily~~  
19 ~~limited in either number or kind to~~:

20 (1) the authority to consent to marriage, to  
21 enlistment in the armed forces of the United States or to major  
22 medical, psychiatric and surgical treatment;

23 (2) the authority to represent the child in  
24 legal actions and to make other decisions of substantial legal  
25 significance concerning the child;

1 (3) the authority and duty of reasonable  
2 visitation of the child;

3 (4) the rights and responsibilities of legal  
4 custody when the physical custody of the child is exercised by  
5 the child's parents, except when legal custody has been vested  
6 in another person; and

7 (5) when the rights of the child's parents have  
8 been terminated as provided for in the laws governing  
9 termination of parental rights or when both of the child's  
10 parents are deceased, the authority to consent to the adoption  
11 of the child and to make any other decision concerning the child  
12 that the child's parents could have made;

13 J. "guardian ad litem" means an attorney appointed  
14 by the children's court to represent and protect the best  
15 interests of the child in a court proceeding; provided that no  
16 party or employee or representative of a party to the proceeding  
17 shall be appointed to serve as a guardian ad litem;

18 K. "Indian child" means an unmarried person who is:  
19 (1) less than eighteen years old;  
20 (2) a member of an Indian tribe or is eligible  
21 for membership in an Indian tribe; and  
22 (3) the biological child of a member of an  
23 Indian tribe;

24 L. "Indian child's tribe" means:  
25 (1) the Indian tribe in which an Indian child

1 is a member or eligible for membership; or

2 (2) in the case of an Indian child who is a  
3 member or eligible for membership in more than one tribe, the  
4 Indian tribe with which the Indian child has more significant  
5 contacts;

6 M "judge", when used without further qualification,  
7 means the judge of the court;

8 N. "legal custody" means a legal status created by  
9 the order of the court or other court of competent jurisdiction  
10 that vests in a person, department or agency the right to  
11 determine where and with whom a child shall live; the right and  
12 duty to protect, train and discipline the child and to provide  
13 the child with food, shelter, education and ordinary and  
14 emergency medical care, provided that the department has no  
15 financial responsibility for a child not in the actual physical  
16 custody of the department; the right to consent to major  
17 medical, psychiatric, psychological and surgical treatment and  
18 to the administration of legally prescribed psychotropic  
19 medications pursuant to the Children's Mental Health and  
20 Developmental Disabilities Act; and the right to consent to the  
21 child's enlistment in the armed forces of the United States, all  
22 subject to the powers, rights, duties and responsibilities of  
23 the guardian of the child and subject to any existing parental  
24 rights and responsibilities. An individual granted legal  
25 custody of a child shall exercise the rights and

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1 responsibilities as custodian personally, unless otherwise  
2 authorized by the court entering the order;

3 0. "parent" or "parents" includes a biological or  
4 adoptive parent;

5 P. "person" means an individual or any other form of  
6 entity recognized by law;

7 Q. "tribal court" means:

8 (1) a court established and operated pursuant  
9 to a code or custom of an Indian tribe; or

10 (2) any administrative body of an Indian tribe  
11 that is vested with judicial authority;

12 R. "tribal court order" means a document issued by a  
13 tribal court that is signed by an appropriate authority,  
14 including a judge, governor or tribal council member, and that  
15 orders an action that is within the tribal court's jurisdiction;  
16 and

17 S. "tribunal" means any judicial forum other than  
18 the court. "

19 Section 4. Section 32A-2-1 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 30) is amended to read:

21 "32A-2-1. SHORT TITLE. -- Chapter ~~[32]~~ 32A, Article 2 NMSA  
22 1978 may be cited as the "Delinquency Act". "

23 Section 5. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
24 Chapter 77, Section 32, as amended) is amended to read:

25 "32A-2-3. DEFINITIONS. -- As used in the Delinquency Act:

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1           A. "delinquent act" means an act committed by a  
2 child that would be designated as a crime under the law if  
3 committed by an adult, including the following offenses:

4                   (1) pursuant to municipal traffic codes or the  
5 Motor Vehicle Code:

6                           (a) any driving while under the influence  
7 of intoxicating liquor or drugs;

8                           (b) any failure to stop in the event of  
9 an accident causing death, personal injury or damage to  
10 property;

11                           (c) any unlawful taking of a vehicle or  
12 motor vehicle;

13                           (d) any receiving or transferring of a  
14 stolen vehicle or motor vehicle;

15                           (e) any homicide by vehicle;

16                           (f) any injuring or tampering with a  
17 vehicle;

18                           (g) any altering or changing of an engine  
19 number or other vehicle identification numbers;

20                           (h) any altering or forging of a driver's  
21 license or permit or any making of a fictitious license or  
22 permit; or

23                                   ~~[(i) reckless driving;~~

24                                   ~~(j) driving with a suspended or revoked~~  
25 license; ~~or~~

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~~(k)~~ (i) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serve only hamburgers, sandwiches, salads and other fast foods;

(3) any felony violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) any violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

1 (5) any violation of the Controlled Substances  
2 Act;

3 (6) escape from the custody of a law  
4 enforcement officer or a juvenile probation or parole officer or  
5 from any placement made by the department by a child who has  
6 been adjudicated a delinquent child; or

7 (7) any violation of Section 30-15-1.1 NMSA  
8 1978 regarding unauthorized graffiti on personal or real  
9 property;

10 B. "delinquent child" means a child who has  
11 committed a delinquent act;

12 C. "delinquent offender" means a delinquent child  
13 who is subject to juvenile sanctions only and who is not a  
14 youthful offender or a serious youthful offender;

15 D. "detention facility" means a place where a child  
16 less than eighteen years of age may be detained under the  
17 Children's Code pending court hearing and does not include a  
18 facility for the care and rehabilitation of an adjudicated  
19 delinquent child;

20 E. "felony" means an act that would be a felony if  
21 committed by an adult;

22 F. "misdemeanor" means an act that would be a  
23 misdemeanor or petty misdemeanor if committed by an adult;

24 G. "restitution" means financial reimbursement by  
25 the child to the victim or community service imposed by the

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1 court and is limited to easily ascertainable damages for injury  
2 to or loss of property, actual expenses incurred for medical,  
3 psychiatric and psychological treatment for injury to a person  
4 and lost wages resulting from physical injury, which are a  
5 direct and proximate result of a delinquent act. "Restitution"  
6 does not include reimbursement for damages for mental anguish,  
7 pain and suffering or other intangible losses. As used in this  
8 subsection, "victim" means any person who is injured or suffers  
9 damage of any kind by an act that is the subject of a complaint  
10 or referral to law enforcement officers or juvenile probation  
11 authorities. Nothing contained in this definition limits or  
12 replaces the provisions of Subsections A and B of Section  
13 32A-2-27 NMSA 1978;

14 H. "serious youthful offender" means an individual:

15 (1) [fifteen] fourteen to eighteen years of age  
16 who is charged with, ~~[and]~~ indicted or bound over for trial for  
17 ~~[first degree murder.]~~ one of the following offenses:

18 (a) first degree murder, as provided in  
19 Section 30-2-1 NMSA 1978;

20 (b) second degree murder, as provided in  
21 Section 30-2-1 NMSA 1978;

22 (c) voluntary manslaughter, as provided  
23 in Section 30-2-3 NMSA 1978;

24 (d) aggravated assault with a deadly  
25 weapon, as provided in Subsection A of Section 30-3-2 NMSA 1978;

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1                   (e) aggravated battery inflicting great  
2 bodily harm or with a deadly weapon, as provided in Subsection C  
3 of Section 30-3-5 NMSA 1978;

4                   (f) kidnapping, as provided in Section  
5 30-4-1 NMSA 1978; or

6                   (g) robbery while armed with a deadly  
7 weapon, as provided in Section 30-16-2 NMSA 1978; or

8                   (2) fourteen to eighteen years of age who is  
9 charged with committing at least one of the offenses set forth  
10 in Subsection A of Section 32A-2-3 NMSA 1978 and who has  
11 previously been committed to the custody of the corrections  
12 department as a serious youthful offender or youthful offender.

13           A "serious youthful offender" is not a delinquent child as  
14 defined [~~pursuant to the provisions of~~] in this section; and

15           I. "youthful offender" means a delinquent child  
16 subject to adult or juvenile sanctions who is:

17                   (1) [~~fourteen to~~] less than eighteen years of  
18 age at the time of the offense and who is adjudicated for at  
19 least one of the following offenses:

20                           [~~(a) second degree murder, as provided in~~  
21 ~~Section 30-2-1 NMSA 1978;~~

22                           [~~(b)~~] (a) assault with intent to commit a  
23 violent felony, as provided in Section 30-3-3 NMSA 1978;

24                           [~~(c) kidnapping, as provided in Section~~  
25 ~~30-4-1 NMSA 1978;~~

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1                                   ~~(d)~~ aggravated battery, as provided in  
2 ~~Subsection C of Section 30-3-5 NMSA 1978;~~

3                                   ~~(e)~~ (b) aggravated battery upon a peace  
4 officer, as provided in [~~Subsection C of~~] Section 30-22-25 NMSA  
5 1978;

6                                   ~~(f)~~ (c) shooting at a dwelling or  
7 occupied building or shooting at or from a motor vehicle, as  
8 provided in Section 30-3-8 NMSA 1978;

9                                   ~~(g)~~ (d) dangerous use of explosives, as  
10 provided in Section 30-7-5 NMSA 1978;

11                                   ~~(h)~~ (e) criminal sexual penetration, as  
12 provided in Section 30-9-11 NMSA 1978;

13                                   ~~(i)~~ robbery, as provided in Section  
14 ~~30-16-2 NMSA 1978;~~

15                                   ~~(j)~~ (f) aggravated burglary, as provided  
16 in Section 30-16-4 NMSA 1978;

17                                   ~~(k)~~ (g) aggravated arson, as provided  
18 in Section 30-17-6 NMSA 1978; or

19                                   ~~(l)~~ (h) abuse of a child that results  
20 in great bodily harm or death to the child, as provided in  
21 Section 30-6-1 NMSA 1978;

22                                   (2) less than fourteen years of age at the time  
23 of the offense and who is adjudicated for at least one of the  
24 following offenses:

25                                   (a) second degree murder, as provided in

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1 Section 30-2-1 NMSA 1978:

2 (b) voluntary manslaughter, as provided  
3 in Section 30-2-3 NMSA 1978:

4 (c) aggravated assault with a deadly  
5 weapon, as provided in Subsection A of Section 30-3-2 NMSA 1978:

6 (d) aggravated battery inflicting great  
7 bodily harm or with a deadly weapon, as provided in Subsection C  
8 of Section 30-3-5 NMSA 1978:

9 (e) kidnapping, as provided in Section  
10 30-4-1 NMSA 1978; or

11 (f) robbery while armed with a deadly  
12 weapon, as provided in Section 30-16-2 NMSA 1978:

13 [~~(2) fourteen to~~] (3) less than eighteen years  
14 of age at the time of the offense and adjudicated for any felony  
15 offense and who has had three prior, separate felony  
16 adjudications within a three-year time period immediately  
17 preceding the instant offense. The felony adjudications relied  
18 upon as prior adjudications shall not have arisen out of the  
19 same transaction or occurrence or series of events related in  
20 time and location. Successful completion of consent decrees are  
21 not considered a prior adjudication for the purposes of this  
22 paragraph; or

23 [~~(3) fourteen~~] (4) less than thirteen years of  
24 age and adjudicated for first degree murder, as provided in  
25 Section 30-2-1 NMSA 1978. "

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1           Section 6. Section 32A-2-5 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 34, as amended) is amended to read:

3           "32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--  
4 ESTABLISHMENT-- JUVENILE PROBATION AND PAROLE OFFICERS-- POWERS  
5 AND DUTIES. --

6           A. Juvenile probation and parole services shall be  
7 provided by the department.

8           B. To carry out the objectives and provisions of the  
9 Delinquency Act, but subject to its limitations, the department  
10 has the power and duty to:

11                   (1) receive and examine complaints and  
12 allegations that a child is a delinquent child for the purpose  
13 of considering beginning a proceeding pursuant to the provisions  
14 of the Delinquency Act;

15                   (2) make case referrals for services as appear  
16 appropriate or desirable;

17                   (3) make predisposition studies and assessments  
18 and submit reports and recommendations to the court;

19                   (4) supervise and assist a child placed on  
20 probation or parole or under supervision by court order or by  
21 the juvenile parole board;

22                   (5) give notice to any individual who has been  
23 the subject of a petition filed pursuant to the provisions of  
24 the Delinquency Act of the sealing of that individual's records  
25 in accordance with that act;

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1 (6) informally dispose of up to three  
2 misdemeanor charges brought against a child within two years;

3 (7) give notice to the children's court  
4 attorney of the receipt of any felony complaint and of any  
5 recommended adjustment of such felony complaint;

6 (8) identify an Indian child for the purpose of  
7 contacting the Indian child's tribe in delinquency cases; and

8 (9) contact an Indian child's tribe to consult  
9 and exchange information for the purpose of preparing a  
10 predisposition report when commitment or placement of an Indian  
11 child is contemplated or has been ordered and indicate in the  
12 report the name of the person contacted in the Indian child's  
13 tribe and the results of the contact.

14 C. A juvenile probation and parole officer does not  
15 have the powers of a law enforcement officer. A juvenile  
16 probation and parole officer may take into physical custody and  
17 place in detention a child who is under supervision as a  
18 delinquent child when there is reasonable cause to believe that  
19 the child has violated the conditions of his probation, that the  
20 child is in the department's custody and is on pre-parole leave  
21 or family emergency leave release from an institution and has  
22 violated the conditions of his leave, or that the child may  
23 leave the jurisdiction of the court. Taking a child into  
24 custody under this subsection is subject to and shall proceed in  
25 accordance with the provisions of the Delinquency Act relating

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1 to custody and detention procedures and criteria."

2 Section 7. Section 32A-2-7 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 36) is amended to read:

4 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--TIME  
5 WAIVER.--

6 A. Complaints alleging delinquency shall first be  
7 referred to probation services, which shall conduct a  
8 preliminary inquiry to determine the best interests of the child  
9 and of the public with regard to any action to be taken.

10 B. During the preliminary inquiry on a  
11 delinquency complaint, the matter may be referred to another  
12 appropriate agency and conferences may be conducted for the  
13 purpose of effecting adjustments or agreements that will obviate  
14 the necessity for filing a petition. At the commencement of the  
15 preliminary inquiry, the parties shall be advised of their basic  
16 rights pursuant to Section [~~32-2-14~~] 32A-2-14 NMSA 1978, and no  
17 party may be compelled to appear at any conference, to produce  
18 any papers or to visit any place. The preliminary inquiry shall  
19 be completed within the time limits set forth in the Children's  
20 Court Rules and Forms.

21 C. When a child is in detention or custody and the  
22 children's court attorney does not file a petition within the  
23 time limits authorized by the Children's Court Rules and Forms,  
24 the child shall be released immediately.

25 D. After completion of the preliminary inquiry on a

1 delinquency complaint involving a misdemeanor, probation  
2 services may notify the children's court attorney and recommend  
3 an appropriate disposition for the case. If the child has been  
4 referred for three or more prior misdemeanors within two years  
5 of the instant offense, probation services shall notify the  
6 children's court attorney and recommend an appropriate  
7 disposition for the case.

8 E. Probation services shall notify the children's  
9 court attorney of the receipt of any complaint involving an act  
10 that constitutes a felony under the applicable criminal law.  
11 Probation services shall also recommend a disposition to the  
12 children's court attorney.

13 F. The child, through counsel, and the children's  
14 court attorney may agree, without judicial approval, to a waiver  
15 of time limitations imposed after a petition is filed. A time  
16 waiver defers adjudication of the charges. The children's court  
17 attorney may place restrictions on a child's behavior as a  
18 condition of a time waiver. If the child completes the agreed  
19 upon conditions and no new charges are filed against the child,  
20 the pending petition shall be dismissed. If the children's  
21 court attorney files a new petition against the child, the  
22 children's court attorney may proceed on both the original  
23 petition and the new charges. The department shall become a  
24 party if probation services are requested as a condition of the  
25 time waiver. "

Underscored material = new  
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1           Section 8. Section 32A-2-17 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 46, as amended) is amended to read:

3           "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND  
4 EXAMINATIONS. --

5           A. After a petition has been filed and either a  
6 finding with respect to the allegations of the petition has been  
7 made or a notice of intent to admit the allegations of the  
8 petition has been filed, the court may direct that a  
9 predisposition study and report to the court be made in writing  
10 by the department or an appropriate agency designated by the  
11 court concerning the child, the family of the child, the  
12 environment of the child and any other matters relevant to the  
13 need for treatment or to appropriate disposition of the case.  
14 The following predisposition reports shall be provided to the  
15 parties and the court five days before actual disposition or  
16 sentencing:

17                   (1) the adult probation and parole division of  
18 the corrections department shall prepare a predisposition report  
19 for serious youthful offenders;

20                   (2) the department shall prepare a  
21 predisposition report for serious youthful offenders who are  
22 convicted of an offense other than first degree murder;

23                   (3) the department, using the services of a  
24 licensed psychologist, shall prepare a predisposition report for  
25 youthful offenders concerning the youthful offender's

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1 amenability to treatment and if:

2 (a) the court determines that a juvenile  
3 disposition is appropriate, the department shall prepare a  
4 subsequent predisposition report; or

5 (b) the court makes the findings  
6 necessary to impose an adult sentence pursuant to Section  
7 32A-2-20 NMSA 1978, the adult probation and parole division of  
8 the corrections department shall prepare a subsequent  
9 predisposition report; and

10 (4) the department shall prepare a  
11 predisposition report for delinquent offenders, upon the court's  
12 request.

13 B. Where there are indications that the child may be  
14 mentally disordered or developmentally disabled, the court, on  
15 motion by the children's court attorney or that of counsel for  
16 the child, may order the child to be examined at a suitable  
17 place by a physician, a licensed psychologist or a licensed,  
18 independent social worker prior to a hearing on the merits of  
19 the petition. An examination made prior to the hearing or as a  
20 part of the predisposition study and report shall be conducted  
21 on an outpatient basis, unless the court finds that placement in  
22 a hospital or other appropriate facility is necessary.

23 C. The court, after a hearing, may order examination  
24 by a physician, a licensed psychologist or a licensed,  
25 independent social worker of a parent or custodian whose ability

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1 to care for or supervise a child is an issue before the court.

2 D. The court may order that a child adjudicated as a  
3 delinquent child be transferred to the facility designated by  
4 the secretary of the department for a period of not more than  
5 fifteen days within a three hundred sixty-five day time period  
6 for purposes of diagnosis, with direction that the court be  
7 given a report indicating what disposition appears most suitable  
8 when the interests of the child and the public are considered.

9 E. Once the child is committed, the department shall  
10 determine when the child is released. The release shall be any  
11 time after commitment, but not more than fifteen days after  
12 commitment. Upon petition by the department to the court, the  
13 judge may extend the commitment for an additional fifteen days  
14 upon good cause shown. "

15 Section 9. Section 32A-2-19 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 48, as amended) is amended to read:

17 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
18 OFFENDER. --

19 A. At the conclusion of the dispositional hearing,  
20 the court may make and include in the dispositional judgment its  
21 findings on the following:

22 (1) the interaction and interrelationship of  
23 the child with the child's parents, siblings and any other  
24 person who may significantly affect the child's best interests;

25 (2) the child's adjustment to his home, school

1 and community;

2 (3) the mental and physical health of all  
3 individuals involved;

4 (4) the wishes of the child as to his  
5 custodian;

6 (5) the wishes of the child's parents as to the  
7 child's custody;

8 (6) whether there exists a relative of the  
9 child or other individual who, after study by the department, is  
10 found to be qualified to receive and care for the child;

11 (7) the availability of services recommended in  
12 the predisposition report; and

13 (8) the ability of the parents to care for the  
14 child in the home.

15 B. If a child is found to be delinquent, the court  
16 may impose a fine not to exceed the fine that could be imposed  
17 if the child were an adult and, subject to the provisions of the  
18 Delinquency Act relating to the disposition of adjudicated  
19 serious youthful offenders and youthful offenders, may enter its  
20 judgment making any of the following dispositions for the  
21 supervision, care and rehabilitation of the child:

22 (1) any disposition that is authorized for the  
23 disposition of a neglected or abused child, in accordance with  
24 the Abuse and Neglect Act;

25 (2) transfer legal custody to the department,

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1 an agency responsible for the care and rehabilitation of  
2 delinquent children, which shall receive the child at a facility  
3 designated by the secretary of the department as a juvenile  
4 reception facility. The department shall thereafter determine  
5 the appropriate placement, supervision and rehabilitation  
6 program for the child. The judge may include recommendations  
7 for placement of the child. Commitments are subject to  
8 limitations and modifications set forth in Section 32A-2-23 NMSA  
9 1978. The types of commitments include:

10 (a) a short-term commitment of not more  
11 than one year;

12 (b) a long-term commitment for no more  
13 than two years in a long-term facility for the care and  
14 rehabilitation of adjudicated delinquent children;

15 (c) if the child is a delinquent offender  
16 who committed one of the criminal offenses set forth in  
17 Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age  
18 twenty-one, unless sooner discharged; or

19 (d) if the child is a youthful offender,  
20 a commitment to age twenty-one, unless sooner discharged  
21 pursuant to the provisions of Section 32A-2-23 NMSA 1978, to be  
22 followed by a mandatory parole period of not less than one year  
23 following discharge or release regardless of the amount of time  
24 served during placement or commitment;

25 (3) place the child on probation under those

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1 conditions and limitations as the court may prescribe;

2 (4) place the child in a local detention  
3 facility that has been certified in accordance with the  
4 provisions of Section 32A-2-4 NMSA 1978 for a period not to  
5 exceed fifteen days within a three hundred sixty-five day time  
6 period;

7 (5) if a child is found to be delinquent solely  
8 on the basis of Paragraph (3) of Subsection A of Section 32A-2-3  
9 NMSA 1978, the court shall only enter a judgment placing the  
10 child on probation or ordering restitution or imposing a fine  
11 not to exceed the fine that could be imposed if the child were  
12 an adult or any combination of these dispositions; or

13 (6) if a child is found to be delinquent solely  
14 on the basis of Paragraph (2), (4) or (5) of Subsection A of  
15 Section 32A-2-3 NMSA 1978, the court may make any disposition  
16 provided by this section and may enter its judgment placing the  
17 child on probation and, as a condition of probation, transfer  
18 custody of the child to the department for a period not to  
19 exceed six months without further order of the court; provided  
20 that this transfer shall not be made unless the court first  
21 determines that the department is able to provide or contract  
22 for adequate and appropriate treatment for the child and that  
23 the treatment is likely to be beneficial.

24 C. When the child is an Indian child, the Indian  
25 child's cultural needs shall be considered in the dispositional

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1 judgment and reasonable access to cultural practices and  
2 traditional treatment shall be provided.

3 D. No child found to be delinquent shall be  
4 committed or transferred to a penal institution or other  
5 facility used for the execution of sentences of persons  
6 convicted of crimes.

7 E. Whenever the court vests legal custody in an  
8 agency, institution or department, it shall transmit with the  
9 dispositional judgment copies of the clinical reports,  
10 predisposition study and report and other information it has  
11 pertinent to the care and treatment of the child.

12 F. Prior to any child being placed in the custody of  
13 the department, the department shall be provided with reasonable  
14 oral or written notification and an opportunity to be heard.

15 G. In addition to any other disposition pursuant to  
16 this section or any other penalty provided by law, if a child  
17 fifteen years of age or older is adjudicated delinquent on the  
18 basis of Paragraph (2), (4) or (5) of Subsection A of Section  
19 32A-2-3 NMSA 1978, the child's driving privileges may be denied  
20 or the child's driver's license may be revoked for a period of  
21 ninety days. For a second or a subsequent adjudication, the  
22 child's driving privileges may be denied or the child's driver's  
23 license revoked for a period of one year. Within twenty-four  
24 hours of the dispositional judgment, the court may send to the  
25 motor vehicle division of the taxation and revenue department

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1 the order adjudicating delinquency. Upon receipt of an order  
2 from the court adjudicating delinquency, the director of the  
3 motor vehicle division of the taxation and revenue department  
4 may revoke or deny the delinquent's driver's license or driving  
5 privileges. Nothing in this section may prohibit the delinquent  
6 from applying for a limited driving privilege pursuant to  
7 Section 66-5-35 NMSA 1978, and nothing in this section precludes  
8 the delinquent's participation in an appropriate educational,  
9 counseling or rehabilitation program.

10 H. In addition to any other disposition pursuant to  
11 this section or any other penalty provided by law, when a child  
12 is adjudicated delinquent on the basis of Paragraph (7) of  
13 Subsection A of Section 32A-2-3 NMSA 1978, the child shall  
14 perform the mandatory community service set forth in Section  
15 30-15-1.1 NMSA 1978. When a child fails to completely perform  
16 the mandatory community service, the name and address of the  
17 child's parent or legal guardian shall be published in a  
18 newspaper of general circulation, accompanied by a notice that  
19 he is the parent or legal guardian of a child adjudicated  
20 delinquent for committing graffiti. "

21 Section 10. Section 32A-2-20 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 49, as amended) is amended to read:

23 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

24 A. The court has the discretion to invoke either an  
25 adult sentence or juvenile sanctions on a youthful offender.

1 The children's court attorney shall file a notice of intent to  
2 invoke an adult sentence within ten working days of the filing  
3 of the petition, provided that the court may extend the time for  
4 filing of the notice of intent to invoke an adult sentence, for  
5 good cause shown, prior to the adjudicatory hearing. A  
6 preliminary hearing by the court or a hearing before a grand  
7 jury shall be held, within ten days after the filing of the  
8 intent to invoke an adult sentence, to determine whether  
9 probable cause exists to support the allegations contained in  
10 the petition.

11 B. If the children's court attorney has filed a  
12 notice of intent to invoke an adult sentence and the child is  
13 adjudicated as a youthful offender, the court shall make the  
14 following findings in order to invoke an adult sentence:

15 (1) the child is not amenable to treatment or  
16 rehabilitation as a child in available facilities; and

17 (2) the child is not eligible for commitment to  
18 an institution for the developmentally disabled or mentally  
19 disordered.

20 C. In making the findings set forth in Subsection B  
21 of this section, the judge shall consider the following factors:

22 (1) the seriousness of the alleged offense;

23 (2) whether the alleged offense was committed  
24 in an aggressive, violent, premeditated or willful manner;

25 (3) whether a firearm was used to commit the

1 alleged offense;

2 (4) whether the alleged offense was against  
3 persons or against property, greater weight being given to  
4 offenses against persons, especially if personal injury  
5 resulted;

6 (5) the sophistication and maturity of the  
7 child as determined by consideration of the child's home,  
8 environmental situation, emotional attitude and pattern of  
9 living;

10 (6) the record and previous history of the  
11 child;

12 (7) the prospects for adequate protection of  
13 the public and the likelihood of reasonable rehabilitation of  
14 the child by the use of procedures, services and facilities  
15 currently available; and

16 (8) any other relevant factor, provided that  
17 factor is stated on the record.

18 D. If the court invokes an adult sentence, the court  
19 may sentence the child to less than, but shall not exceed, the  
20 mandatory adult sentence. A youthful offender given an adult  
21 sentence shall be treated as an adult offender and shall be  
22 transferred to the legal custody of an agency responsible for  
23 incarceration of persons sentenced to adult sentences. This  
24 transfer terminates the jurisdiction of the court over the child  
25 with respect to the delinquent acts alleged in the petition.

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1           E. If a juvenile disposition is appropriate, the  
2 court shall follow the provisions set forth in Section 32A-2-19  
3 NMSA 1978. A youthful offender may be subject to extended  
4 commitment in the care of the department until the age of  
5 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA  
6 1978.

7           F. A fourteen to eighteen year old child who is  
8 charged with [~~first degree murder~~] an offense set forth in  
9 Paragraph (1) of Subsection H of Section 32A-2-3 NMSA 1978 but  
10 convicted of [~~an offense less than first degree murder~~] a lesser  
11 offense and who is not a serious youthful offender as set forth  
12 in Paragraph (2) of Subsection H of Section 32A-2-3 NMSA 1978  
13 is subject to the dispositions set forth in this section. "

14           Section 11. Section 32A-2-23 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 52, as amended) is amended to read:

16           "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--  
17 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

18           A. A judgment transferring legal custody of an  
19 adjudicated delinquent child to an agency responsible for the  
20 care and rehabilitation of delinquent children divests the court  
21 of jurisdiction at the time of transfer of custody, unless the  
22 transfer of legal custody is for a commitment not exceeding  
23 fifteen days pursuant to the provisions of Section 32A-2-19 NMSA  
24 1978, in which case the court retains jurisdiction, and:

25                   (1) the juvenile parole board pursuant to the

1 Juvenile Parole Board Act has the exclusive power to parole or  
2 release the child;

3 (2) the supervision of a child after release  
4 under Paragraph (1) of this subsection may be conducted by the  
5 juvenile parole board in conjunction with the department or any  
6 other suitable state agency or under any contractual  
7 arrangements the juvenile parole board deems appropriate; and

8 (3) the period of time a child absconds from  
9 parole or probation supervision shall toll all time limits for  
10 the requirement of filing a petition to revoke probation or  
11 parole and shall toll the computation of the period of probation  
12 or parole supervision pursuant to the provisions of the  
13 Delinquency Act.

14 B. A judgment of probation or protective supervision  
15 shall remain in force for an indeterminate period not to exceed  
16 the term of commitment from the date entered.

17 C. A child shall be released by an agency and  
18 probation or supervision shall be terminated by juvenile  
19 probation and parole services or the agency providing  
20 supervision when it appears that the purpose of the order has  
21 been achieved before the expiration of the period of the  
22 judgment. A release or termination and the reasons therefor  
23 shall be reported promptly to the court in writing by the  
24 releasing authority.

25 D. Prior to the expiration of a long-term

1 commitment, as provided for in Section 32A-2-19 NMSA 1978, the  
2 court may extend the judgment for additional periods of one year  
3 until the child reaches the age of twenty-one if the court finds  
4 that the extension is necessary to safeguard the welfare of the  
5 child or the public interest.

6 E. Prior to the expiration of a judgment of  
7 probation, the court may extend the judgment for an additional  
8 period of one year until the child reaches the age of twenty-one  
9 if the court finds that the extension is necessary to protect  
10 the community or to safeguard the welfare of the child.

11 F. The court may dismiss a motion if it finds after  
12 preliminary investigation that the motion is without substance.  
13 If the court is of the opinion that the matter should be  
14 reviewed, it may, upon notice to all necessary parties, proceed  
15 to a hearing in the manner provided for hearings on petitions  
16 alleging delinquency. The court may terminate a judgment if it  
17 finds that the child is no longer in need of care, supervision  
18 or rehabilitation or it may enter a judgment extending or  
19 modifying the original judgment if it finds that action  
20 necessary to safeguard the child or the public interest.

21 G. A child may make a motion to modify a children's  
22 court or adult disposition within thirty days of the judge's  
23 decision. If the court is of the opinion that the matter should  
24 be reviewed, it may, upon notice to all necessary parties,  
25 including the victims of the offense for which the child was

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1 adjudicated a delinquent offender or a youthful offender  
2 proceed to a hearing in the manner provided for hearings on  
3 petitions alleging delinquency. "

4 Section 12. Section 32A-2-26 NMSA 1978 (being Laws 1993,  
5 Chapter 77, Section 55) is amended to read:

6 "32A-2-26. SEALING OF RECORDS. --

7 A. On motion by or on behalf of an individual who  
8 has been the subject of a delinquency petition or on the court's  
9 own motion, the court shall vacate its findings, orders and  
10 judgments on the petition and order the legal and social files  
11 and records of the court, probation services and any other  
12 agency in the case sealed ~~and~~. If requested in the motion,  
13 the court shall also order law enforcement files and records  
14 sealed. An individual adjudicated as a youthful offender or  
15 serious youthful offender may not file a motion to seal his  
16 records pursuant to the provisions of this section. An order  
17 sealing records and files shall be entered if the court finds  
18 that:

19 (1) two years have elapsed since the final  
20 release of the individual from legal custody and supervision or  
21 two years have elapsed since the entry of any other judgment not  
22 involving legal custody or supervision; and

23 (2) the individual has not, within the two  
24 years immediately prior to filing the motion, been convicted of  
25 a felony or of a misdemeanor involving moral turpitude or been

1 found delinquent by a court and no proceeding is pending seeking  
2 such a conviction or finding.

3 B. Reasonable notice of the motion shall be given  
4 to:

- 5 (1) the children's court attorney;
- 6 (2) the authority granting the release;
- 7 (3) the law enforcement officer, department and  
8 central depository having custody of the law enforcement files  
9 and records if those records are included in the motion; and
- 10 (4) any other agency having custody of records  
11 or files subject to the sealing order.

12 C. Upon the entry of the sealing order, the  
13 proceedings in the case shall be treated as if they never  
14 occurred and all index references shall be deleted ~~[and]~~. The  
15 court, law enforcement officers and departments and agencies  
16 shall reply, and the individual may reply, to an inquiry that no  
17 record exists with respect to such person. Copies of the  
18 sealing order shall be sent to each agency or official named in  
19 the order.

20 D. Inspection of the files and records or the  
21 release of information in the records included in the sealing  
22 order may thereafter be permitted by the court only:

- 23 (1) upon motion by the individual who is the  
24 subject of the records and only to those persons named in the  
25 motion; and

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1 (2) in its discretion, in an individual case,  
2 to any clinic, hospital or agency that has the individual under  
3 care or treatment or to persons engaged in fact finding or  
4 research.

5 E. Any finding of delinquency or need of services or  
6 conviction of a crime subsequent to the sealing order may at the  
7 court's discretion be used by the court as a basis to set aside  
8 the sealing order.

9 F. A person who has been the subject of a petition  
10 filed pursuant to the provisions of the Delinquency Act shall be  
11 notified in writing by the juvenile probation and parole officer  
12 of the right to have records sealed at the expiration of the  
13 disposition. "

14 Section 13. Section 32A-2-27 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 56) is amended to read:

16 "32A-2-27. INJURY TO PERSON OR DESTRUCTION OF PROPERTY--  
17 LIABILITY-- COSTS AND ATTORNEYS' FEES-- RESTITUTION. --

18 A. Any person may recover actual damages not to  
19 exceed four thousand dollars (\$4,000) [~~in a civil action~~] in a  
20 court, including children's court, or tribunal of competent  
21 jurisdiction from the parent, guardian or custodian having  
22 custody and control of a child when the child has maliciously or  
23 willfully injured a person or damaged, destroyed or deprived use  
24 of property, real or personal, belonging to the person bringing  
25 the action.

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1           B. Any person may recover actual damages in a civil  
2 action in a court of competent jurisdiction from a parent,  
3 guardian or custodian who has custody or control of a child,  
4 when the child maliciously or willfully injures another person  
5 or maliciously or willfully damages or destroys real or personal  
6 property belonging to another person, when the court determines  
7 that the child's parent, guardian or custodian failed to  
8 exercise appropriate supervision and control of the child.

9           [~~B.~~] C. Recovery of damages under this section is  
10 limited to the actual damages proved in the action [~~not to~~  
11 ~~exceed four thousand dollars (\$4,000) taxable court costs~~] and,  
12 in the discretion of the court, reasonable attorneys' fees to be  
13 fixed by the court or tribunal.

14           [~~C.~~] D. Nothing contained in this section limits the  
15 discretion of the court to issue an order requiring damages or  
16 restitution to be paid by the child when the child has been  
17 found to be within the provisions of the Delinquency Act.

18           [~~D.~~] E. Nothing contained in this section shall be  
19 construed so as to impute liability to any foster parent. "

20           Section 14. Section 32A-2-28 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 57) is amended to read:

22           "32A-2-28. PARENTAL RESPONSIBILITY. --

23           A. In any complaint alleging delinquency, a parent  
24 of the child alleged to be delinquent [~~may~~] shall be made a  
25 party in the petition, unless the court finds that making the

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1 parent a party will be detrimental to the child's  
2 rehabilitation. If a parent is made a party and if a child is  
3 adjudicated a delinquent, the court may order the parent or  
4 parents to submit to counseling, participate in any probation or  
5 other treatment program ordered by the court and, if the child  
6 is committed for institutionalization, participate in any  
7 institutional treatment or counseling program, including  
8 attendance at the site of the institution. The court shall  
9 order the [~~parent~~] parents to support the child committed for  
10 institutionalization by paying the reasonable costs of support,  
11 maintenance and treatment of the child that the parent is  
12 financially able to pay. The court may use the child support  
13 guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate  
14 a reasonable payment.

15 B. The court may order a child placed on probation  
16 or parole, or the child's parents, to pay the reasonable costs  
17 of that probation or parole.

18 [~~B.-~~] C. If a fine is imposed against a child by a  
19 court of this state, the [~~parent~~] parents of the child [~~is~~] are  
20 not liable to pay the fine.

21 [~~C.-~~] D. The court may enforce any of its orders  
22 issued pursuant to this section by use of its contempt power."

23 Section 15. Section 32A-2-31 NMSA 1978 (being Laws 1993,  
24 Chapter 77, Section 60) is amended to read:

25 "32A-2-31. CHILD ADJUDICATED DELINQUENT-- VICTIM

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1 RESTITUTION-- COMPENSATION-- DEDUCTIONS. --

2 A. A delinquent child may be ordered by the court to  
3 pay restitution [~~to the victim of the child's delinquent act~~].

4 If the court orders payment of restitution, it shall be paid to  
5 the court clerk and the clerk shall transmit the restitution  
6 payment to the victim of the child's delinquent act.

7 B. The department may provide compensation to a  
8 delinquent child engaged in a rehabilitative work program and  
9 shall promulgate necessary rules and regulations to provide  
10 deductions from that compensation for:

11 (1) victim restitution ordered by the court and  
12 for transmitting those deductions to the clerk of that court;

13 (2) the crime victims reparation fund and for  
14 transmitting those deductions to the state treasurer for credit  
15 to that fund; and

16 (3) the reasonable costs incident to the  
17 confinement of the delinquent child.

18 C. The deductions provided by Subsection B of this  
19 section shall not exceed fifty percent of the compensation  
20 earned by the child and shall not be less than five percent of  
21 that compensation. "

22 Section 16. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
23 Chapter 77, Section 61) is amended to read:

24 "32A-2-32. CONFIDENTIALITY-- RECORDS. --

25 A. All social records, including diagnostic

1 evaluation, psychiatric reports, medical reports, social studies  
2 reports, pre-parole reports and supervision histories obtained  
3 by the juvenile probation office, parole officers and parole  
4 board or in possession of the department, are privileged and  
5 shall not be disclosed directly or indirectly to the public.  
6 For the purposes of this section, names and referral histories  
7 are not social records.

8 B. The records described in Subsection A of this  
9 section shall be open to inspection only by:

- 10 (1) court personnel;
- 11 (2) court appointed special advocates;
- 12 (3) the child's guardian ad litem;
- 13 (4) department personnel;
- 14 (5) any local substitute care review board or  
15 any agency contracted to implement local substitute care review  
16 boards;
- 17 (6) corrections department personnel;
- 18 (7) law enforcement officials;
- 19 (8) district attorneys;
- 20 (9) any state government social services agency  
21 in any state;
- 22 (10) those persons or entities of a child's  
23 Indian tribe specifically authorized to inspect such records  
24 pursuant to the federal Indian Child Welfare Act of 1978 or any  
25 regulations promulgated thereunder;

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1 (11) tribal juvenile justice system and social  
2 service representatives;

3 (12) a foster parent, if the records are those  
4 of a child currently placed with that foster parent or of a  
5 child being considered for placement with that foster parent  
6 when the records concern the social, medical, psychological or  
7 educational needs of the child;

8 (13) school personnel involved with the child  
9 if the records concern the child's social or educational needs;

10 (14) health care or mental health professionals  
11 involved in the evaluation or treatment of the child, the  
12 child's parents, guardians or custodian or other family members;

13 (15) representatives of the protection and  
14 advocacy system, pursuant to the provisions of the federal  
15 Developmental Disabilities Assistance and Bill of Rights Act and  
16 the federal Protection and Advocacy for Mentally Ill Individuals  
17 Act of 1991; and

18 (16) any other person or entity, by order of  
19 the court, having a legitimate interest in the case or the work  
20 of the court.

21 C. Whoever intentionally and unlawfully releases any  
22 information or records closed to the public pursuant to this  
23 section or releases or makes other unlawful use of records in  
24 violation of this section is guilty of a petty misdemeanor. "

25 Section 17. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is July 1, 1997.

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**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

**March 19, 1997**

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 767

has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BILL  
767

DO PASS, and thence referred to the APPROPRIATIONS  
AND FINANCE COMMITTEE.

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

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Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Rios, Sanchez

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 767

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 2 Against

Yes: 6

No: McSorley, Macias

Excused: None

Absent: None

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Underscored material = new  
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